

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Farina	:	
	:	C-2022-3030803
v.	:	
	:	
Metropolitan Edison Company	:	

ORDER
GRANTING REQUEST TO CONVERT EVIDENTIARY HEARING
FROM TELEPHONIC TO IN-PERSON

On December 9, 2021, Laura Farina (Ms. Farina or Complainant) filed a Formal Complaint against Metropolitan Edison Company (Met-Ed or Company). The Formal Complaint was served on Met-Ed on February 9, 2022. The Complainant alleges that Met-Ed’s smart meter is unsafe and unhealthy. As relief, Ms. Farina requests that the smart meter be replaced with an analog meter at no cost, and that she not be charged a monthly fee for having an analog meter.

On March 2, 2022, Met-Ed filed a letter, stating that Met-Ed would respond to the Formal Complaint when the Commission lifts its stay on smart meter formal complaint proceedings at Docket No. M-2009-2092655.¹

On April 5, 2023, Ms. Farina filed a letter with the Commission inquiring about the status of her case.

¹ By Order entered November 4, 2020, the Commission ordered that any formal complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company’s deployment of smart meter technology as being in violation of 66 Pa.C.S. § 1501 is to be stayed until the Commission takes further action to lift the stay. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered November 4, 2020).

On May 11, 2023, I was assigned to preside over this proceeding. Also on May 11, 2023, I issued an order advising the parties that this matter was stayed until further direction by the Commission.

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.

On December 4, 2023, Met-Ed filed an answer and new matter to the Complaint. In the answer, Met-Ed denied that the smart meter installed at Ms. Farina's service location is unsafe or unhealthy. Met-Ed further alleges that it is legally required to install the smart meter, and that a customer cannot opt-out of, or rescind, a smart meter installation. In its new matter, Met-Ed asserts that, consistent with the Pennsylvania Supreme Court's decision in *Povacz*,² Met-Ed customers may only receive a smart meter related accommodation ordered by the Commission if they are able to establish a violation of 66 Pa.C.S. § 1501. Met-Ed further asserts that it is willing and available to discuss with Complainant the option under its tariff that a customer may request that the meter be relocated to a mutually agreeable location, subject to the customer bearing the related expenses.³ However, Met-Ed reiterates that its tariff does not allow customers, such as Complainant, to opt-out of the smart meter installation. Met-Ed's new matter included a notice to plead. The Complainant did not file a reply to Met-Ed's new matter.

On January 5, 2024, the Commission issued a telephonic prehearing conference notice setting a call-in telephonic prehearing conference for this matter for March 1, 2024 at 10:00 a.m. In anticipation of that prehearing conference, I issued a prehearing conference order on January 5, 2024, setting forth various rules that would govern the March 1, 2024 prehearing conference.

² *Povacz v. Pa. PUC*, 2022 Pa. LEXIS 1598 (Pa. 2022). In *Povacz*, the Pennsylvania Supreme Court resolved many of the outstanding legal issues in many smart meter cases. The court held, among other things, that under Act 129, customers have no right to refuse smart meter installation. *Id.* at 997. The court further clarified the burden of proof required to support a claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501. Specifically, the court held that to prove that a smart meter is unsafe service under Section 1501, a complainant must support that allegation with expert testimony. *Id.* at 1006.

³ See Met-Ed Tariff Rule 4, Electric Pa. P.U.C. No. 52, Original Page 32.

The March 1, 2024 prehearing conference was held as scheduled. Counsel for Met-Ed appeared at the prehearing conference. Ms. Farina did not appear.⁴ As was stated in the prehearing conference order, failure of a party to participate in the conference, after being served with notice of the date, time, and location thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached, and an order or ruling with respect thereto. 52 Pa.Code § 5.222(e). At the prehearing conference, I directed that, before an evidentiary hearing is scheduled, several steps should take place, including identification of expert witnesses, which is a requirement per *Povacz*. During the prehearing conference, I also granted counsel for Met-Ed's request that written testimony be permitted in this proceeding.⁵ Accordingly, on March 1, 2024, I issued an order directing the parties to: identify by April 26, 2024 any experts they may wish to provide testimony in this proceeding, along with a summary of the expected testimony of each expert; submit a status report, as well as written direct testimony and proposed exhibits by June 14, 2024; submit written rebuttal testimony and proposed exhibits by July 19, 2024; and confer and propose to me evidentiary hearing dates for August and/or September 2024.

On April 26, 2024, Met-Ed submitted a letter, identifying one expected witness, along with the expected subject matter of the witness's testimony. Ms. Farina did not submit information regarding any potential witness by April 26, 2024.

On June 14, 2024, Met-Ed submitted a letter, identifying a new witness that it expected to present at an evidentiary hearing, and noting that the Company had not, to date, received Ms. Farina's witness information. Met-Ed's letter also requested a one-day telephonic evidentiary hearing. Also on June 14, 2024, Met-Ed submitted exhibits that it intends to present at a future evidentiary hearing. Met-Ed did not submit written testimony by June 14, 2024.

⁴ The prehearing conference convened at 10:00 a.m. but did not start until 10:15 a.m. to provide Ms. Farina additional time to appear.

⁵ Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses. 52 Pa. Code § 5.412.

On June 18, 2024, I received a letter from Ms. Farina dated June 7, 2024 (June 7 letter), which stated that she did not receive any mail advising her to respond to any hearing or advise of witnesses by a set date. Ms. Farina's June 7 letter identified two witnesses. Ms. Farina's letter also requested to be advised of a hearing date. Ms. Farina did not submit written testimony by June 14, 2024.

On June 21, 2024, I issued an order modifying the March 1, 2024 Order Establishing Litigation Schedule, and provided instructions on how to participate in a telephonic evidentiary hearing scheduled for September 27, 2024, beginning at 10 a.m. On June 24, 2024, the Commission issued an initial call-in telephone hearing notice setting a telephonic hearing for this matter for September 27, 2024 at 10:00 a.m.

On June 26, 2024, I received a letter from Ms. Farina dated June 19, 2024 (June 19 letter), stating that she is not available for a hearing between August 5, 2024 and August 7, 2024, or between September 25, 2024 and September 30, 2024. An order was issued on June 28, 2024, changing the scheduled date for an evidentiary hearing from September 27, 2024 to September 13, 2024 at 10:00 a.m. Also on June 28, 2024, the Commission issued a notice rescheduling the September 27, 2024 hearing to September 13, 2024, beginning at 10:00 a.m.

On July 9, 2024, I received a letter from Ms. Farina, dated July 2, 2024, requesting that the evidentiary hearing in this matter take place in person. I forwarded the letter to counsel for Met-Ed, stating that I would schedule a prehearing conference for August 2, 2024 to discuss Ms. Farina's request that the evidentiary hearing take place in person. On July 12, 2024, the Commission issued a telephonic prehearing conference notice setting a call-in telephonic prehearing conference for this matter for August 2, 2024 at 10:00 a.m.

The prehearing conference was held as scheduled.⁶ Both Ms. Farina and counsel for Met-Ed participated. Ms. Farina repeated her request that the evidentiary hearing take place in person. Ms. Farina stated that she and her witnesses were willing and able to travel to Harrisburg for an evidentiary hearing. Counsel for Met-Ed indicated that the Company preferred

⁶ To order a copy of the transcript from the prehearing conference, parties may contact Karasch at 800-621-5689.

that the hearing take place telephonically. Met-Ed stated that both its counsel and witnesses are located outside of the Harrisburg area. During the prehearing conference, parties also discussed matters related to proposed exhibits, witnesses, and Ms. Farina confirmed that there is no longer an active Protection from Abuse order that may be applicable to her case.

Section 5.483 of the Commission's regulations provides presiding officers with the authority to regulate the course of proceedings. 52 Pa.Code § 5.483(a). Presiding officers are required to conduct fair and impartial hearings and maintain order. 52 Pa.Code § 5.485(a). Additionally, administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984). Ms. Farina strongly prefers to present her case in-person. Although it is not clear from the discussions that took place during the August 2, 2024 prehearing conference that Ms. Farina could not present her case adequately by telephone, I find that, in the interest of conducting orderly proceedings and avoiding any doubt as to whether Ms. Farina is provided adequate due process, Ms. Farina's request that the evidentiary hearing be converted from telephonic to in person should be granted. Therefore, the telephonic evidentiary hearing scheduled for September 13, 2024, beginning at 10 a.m., will be converted to an in-person evidentiary hearing.

However, a party may request that I convert the September 13, 2024 in-person evidentiary hearing to a telephonic prehearing conference. A party should make its request by filing a letter to the docket and serving the parties with its letter by no later than August 30, 2024. If a party makes such a request, a notice will be issued converting the September 13, 2024 in-person evidentiary hearing to a telephonic prehearing conference. I find this is necessary because parties have, until now, relied on the evidentiary hearing to be held telephonically. Given the relatively short time between issuance of this order and September 13, 2024 hearing date, a party may have a conflict with attending the September 13, 2024 hearing in person, or need to discuss other accommodations for a party to attend an in-person evidentiary hearing. As further background, by order issued March 1, 2024, I directed that parties initially provide me their preference for a telephonic or in-person evidentiary hearing by June 14, 2024. By letter dated June 14, 2024, Met-Ed indicated its preference for a telephonic hearing. Ms. Farina did not indicate to me her preference by June 14, 2024. Therefore, by notices sent June 24, 2024 and June 28, 2024, I set the evidentiary hearing to take place by telephone. I did not receive Ms.

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